

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND  
FUNERAL DIRECTORS AND SCOTT D. SOUDER**

(Funeral Director)

000622 JUL -12

The State Board of Embalmers and Funeral Directors (the "Board") and Scot D. Souder ("Licensee" or "Souder") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Scott D. Souder" (the "Settlement Agreement") to resolve the question of whether Souder's funeral director license should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on Souder's funeral director license.

Pursuant to the terms of Section 536.060 RSMo<sup>1</sup>, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree to final disposition of this matter as contained in this Settlement Agreement.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his licenses. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

---

<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

RECEIVED  
JUL 01 2013  
STATE BOARD OFFICE

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that he has been advised of his right to consult with private legal counsel, at his expense, to assist him with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

#### **Relevant Statutes and Regulations**

1. Section 333.330.2, RSMo, authorizes discipline against funeral director licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;

\* \* \*

(3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority, permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

\* \* \*

(12) Issuance of a certificate of registration or authority, permit, or license based up on a material mistake of fact;

\* \* \*

(14) Violation of any professional trust or confidence.

2. Regulation 20 CSR 2120-2.060(28), states:

(28) A Missouri licensed funeral director has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, whether or not sentence was imposed. This information shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

### **Joint Stipulation of Facts and Conclusions of Law**

The parties agree and stipulate to the following findings of fact and conclusions of law:

### **Parties and Background**

3. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

4. Scott D. Souder is an individual who has registered his address with the Board as 1306 NE 79<sup>th</sup> Street, Kansas City, Missouri 64118.

5. Souder holds funeral director license number FDR 007244 which is current and active.

6. Souder submitted his "Application for Preneed Agent/Funeral Director" to the Board that he signed before a notary public on October 9, 2012 (the "Agent Application").

### **Basis for Discipline**

#### **Disclosures by Applicant**

7. On the Agent Application, Souder answered "no" to question 6 that stated:

Have you ever been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not sentence was imposed (include SIS) or are such actions currently pending (excluding traffic violations.)?

8. On the Agent Application, Souder answered "yes" to question 7 that stated:

Have you ever been convicted, adjudged guilty by a court, pled guilty or nolo contendere to any traffic offense resulting from or related to the use of drugs, alcohol, whether or not sentence was imposed (includes SIS), or are such actions currently pending?

9. Along with the Agent Application, Souder provided the requested information about his offenses.

#### **Offenses**

10. In January, 1996, Souder was arrested and was subsequently charged and pled guilty to the class B misdemeanor of "DWI (Alcohol Intoxication). On April 17, 1996, Souder plead guilty and was placed on probation for 2 years and given a suspended imposition of sentence. Souder completed his sentence in April, 1998. *State v. Scott David Souder*, Circuit Court of Clay County, Missouri, Case number 7TR196000337

11. In January, 2003, Souder was arrested for driving while intoxicated and was subsequently charged with the ordinance violation of Excessive BAC and was sentenced to 30

days incarceration with suspended execution of sentence and placed on probation for 2 years. Souder completed his sentence in March, 2005. *City of Gladstone v. Scott D. Souder*, Case number 230754.

12. In 2005, Souder was arrested and, subsequently charged with an A misdemeanor driving while intoxicated, as a prior offender. On August 9, 2005, Souder was found and adjudged guilty and sentenced to 180 days incarceration, with a suspended execution of sentence and placed on supervised probation for 2 years. Souder completed his probation in August, 2007. *State v. Scott David Souder*, Case number 040941240.

*Licensure Renewal Statements Previously Submitted to the Board*

13. Souder submitted to the Board an "Application for Registration as an Intern Funeral Director" to the Board that he signed on March 18, 1997; an "Application for Registration as an Intern Funeral Director" that he signed on June 2, 1999; an "Application for Examination" that he signed on September 21, 1997; an "Application for Registration as an Apprentice Funeral Director" that he signed on December 2, 1997; and, an "Application for Practical Examination" that he signed in May 1998 (collectively, the "Funeral Director Applications"). On each of the Funeral Director Applications, Souder responded "no" to the following questions:

- a. Have you ever been convicted, adjudged guilty by a court, pleaded guilty or pleaded nolo contendere to any crime (excluding traffic violation)?
- c. Have you ever been in the past five (5) years convicted, adjudged guilty by a court, pled guilty or nolo contendere to any traffic offense resulting from or related to the use of drugs or alcohol?

14. At the time Souder submitted the Applications, he had plead guilty to a crime and plead guilty to a traffic offense related to the use of drugs or alcohol and was on probation for that criminal conduct up until a few weeks before Souder submitted his Application for Practical Examination, but he did not truthfully answer the questions on the Funeral Director Applications.

15. Until submission of the Agent Application, Souder had never disclosed to the Board his offenses as listed above.

16. On each funeral director license renewal form, Souder was asked to disclose any offenses and he disclosed none.

17. On his funeral director renewal form he signed on March 6, 2004 (the "2004 Renewal"), Souder checked "no" to the following questions:

9. Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state or if (sic) the United States since you last renewed this license. Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES").

11. Since you last renewed this license, have you been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any traffic offense (including municipal violations) resulting from or related to the use of drugs or alcohol?

18. Souder was adjudged guilty for the traffic offense of driving with excessive blood alcohol in January, 2003. At the time Souder submitted his 2004 Renewal, Souder had submitted his previous license renewal on April 1, 2002. Souder did not truthfully complete his 2004 Renewal.

19. On the funeral director license renewal Souder signed on March 23, 2006 (the "2006 Renewal"), Souder checked "no" in response to the following questions:

7. Have you ever been arrested for, or subject to prosecution for, or entered a plea of guilty to, or been found guilty of, an offense against the laws of any state or the United States, whether or not sentence was imposed? Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES").

8. Have you been arrested for, or the subject of proceedings regarding, or entered a plea of guilty to, or been found guilty of, conduct that involved the use of alcohol or drugs, whether the proceedings were criminal, civil, or military, and whether or not any sentence was imposed? Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES").

20. In 2005, Souder was arrested, charged and adjudged guilty for driving while intoxicated, as a prior offender. At the time he submitted the 2006 Renewal, Souder had submitted his previous license renewal on March 6, 2004; he did not truthfully complete the 2006 Renewal.

21. A licensee of the Board has the professional duty to truthfully complete all license application and renewal forms submitted to the Board.

22. Driving while intoxicated is an offense reasonably related to the qualifications, functions and duties of a licensee of the Board.

#### Cause to Discipline

23. The Board has cause to discipline Souder's funeral director license pursuant to Section 333.330.2 (1), (2), (3), (12), (14) RSMo.

### Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

24. Licensee's license to practice as a funeral director is hereby placed on **PROBATION** for a period of **THREE YEARS** from the effective date of this Settlement Agreement (the "Disciplinary Period"). During the Disciplinary Period, Licensee shall be entitled to practice as a funeral director, subject to the following terms and conditions of probation:

#### Terms and Conditions of Probation

25. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;



- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- f. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;
- g. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation; and
- h. Licensee shall not serve as the supervisor of any funeral director apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice.

26. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

27. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license.

28. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

29. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

30. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose

further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

31. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

32. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

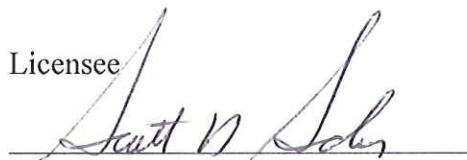
33. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

34. If Licensee requests review, this Settlement Agreement shall become effective on

the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

35. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee



Scott D. Souder

Dated: 6/20/13

Board



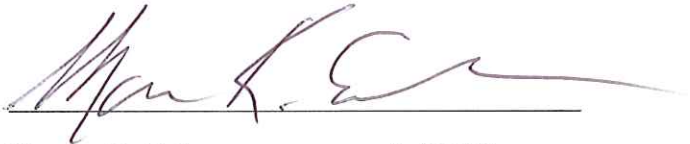
Sandy Sebastian

Executive Director

State Board of Embalmers and Funeral Directors

Dated: 7.8.13

Approved:



Sharon K. Euler # 42950  
Division of Professional Registration  
615 East 13<sup>th</sup> Street, Suite 501  
Kansas City, Missouri 64106  
(816) 889-3687 (voice)  
(816) 889-2345 (fax)  
[Sharon.euler@pr.mo.gov](mailto:Sharon.euler@pr.mo.gov)

COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

**EFFECTIVE DATE**

7-23-13

**STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS**